

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JEFFREY ROBINSON; DAVID SURBER; LAURA
MORTENSEN; CHAEJI KIM; LINDSAY MURPHY;
JACLYN KELLEY; BARBARA OLDENBURGER; and
KATHLEEN NOLAN

Plaintiffs,

vs.

CITY OF SEATTLE; and
BALLARD TERMINAL RAILROAD COMPANY, LLC.

Defendants.

Case No. 22-2-04125-1 SEA

SUMMONS TO CITY OF SEATTLE

TO: CITY OF SEATTLE

A lawsuit has been started against you in the above-entitled court by the above-named Plaintiffs. Plaintiffs' claims are stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned attorney for the plaintiffs within 20 days after the service of this summons, excluding the day of service, if served within the State of Washington (or within 60 days after service of this summons, if served outside the State of Washington), or a default judgment may be entered against you without notice.

A default judgment is one where plaintiffs are entitled to what they ask for because you

1 have not responded. If you serve a notice of appearance on the undersigned attorney, you are
2 entitled to notice before a default judgment may be entered.

3 You may demand that the plaintiffs file this lawsuit with the court. If you do so, the
4 demand must be in writing and must be served upon the person signing this summons. Within
5 14 days after you serve the demand, the plaintiffs must file this lawsuit with the court, or the
6 service on you of this summons and complaint will be void.

7 If you wish to seek the advice of an attorney in this matter, you should do so promptly
8 so that your written response, if any, may be served on time.

9 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State
10 of Washington.

11 Dated this 22nd day of March, 2022.

12 ANDERTON LAW OFFICE-WASHINGTON BIKE LAW

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By: _____

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COMPLAINT FOR PERSONAL INJURIES AND
OTHER DAMAGES

COME NOW the individuals identified as plaintiffs in the caption above (hereinafter collectively referred to as "Plaintiffs"), and for causes of action against the entities identified as defendants in the caption above (hereinafter collectively referred to as "Defendants"), allege as follows:

I. JURISDICTION, VENUE AND SERVICE

1.1 At all times material hereto, each of the Plaintiffs was a resident of King County, Washington.

1.2 Defendant City of Seattle (hereinafter "the City") is a municipal corporation established under the laws of the State of Washington.

1.3 Defendant Ballard Terminal Railroad Company, LLC. (hereinafter “BTR”) is a limited liability company established under the laws of the State of Washington with its principal place of business in King County, Washington.

1.4 The injuries giving rise to the damages alleged in this Complaint all occurred in Seattle, King County, Washington.

1.5 This Court has jurisdiction over this cause.

1.6 Venue is properly before this Court.

1.7 Each Defendant has been properly served with a Summons and this Complaint.

1.8 As to the claims of plaintiff Jeffrey Robinson, each of the Defendants agreed in writing to toll the statute of limitations through July 23, 2022.

1.9 Pursuant to RCW 4.96.020, each Plaintiff, through counsel, properly served a completed and signed valid Claim for Damages form on the City.

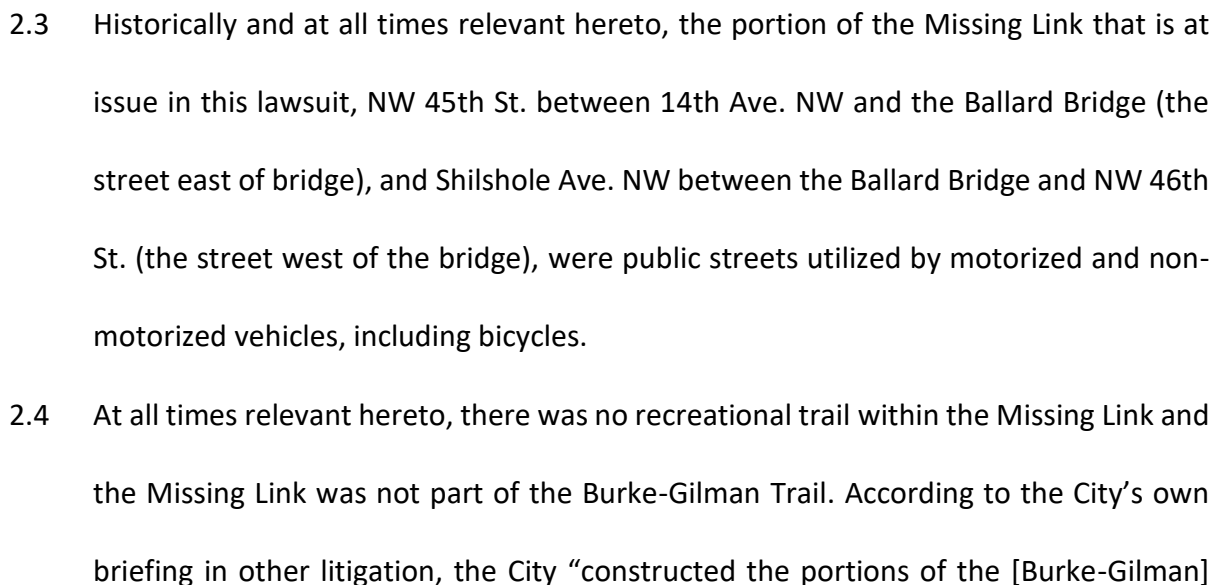
1.10 More than sixty (60) days have elapsed since the date of service of each Plaintiff’s Claim for Damages form on the City, and therefore the Plaintiffs’ Complaint is properly before the Court.

II. FACTS

Background of the Burke-Gilman Trail and the Missing Link

2.1 The Burke-Gilman Trail is a popular multi-use trail and is frequently used by people walking, running, using wheelchairs, and riding bicycles.

2.2 In the Ballard neighborhood of Seattle, the Burke-Gilman Trail is not continuous – there is an approximately 1.4-mile break in the trail in the area between the intersection of NW 45th St. and 11th Ave. NW and the intersection of 32nd Ave. NW and NW 54th St.



Trail north and south of the Missing Link, leaving the Missing Link as the sole remaining gap in the otherwise continuous linear corridor.”¹

2.5 A 2021 opinion in a case involving the City’s plan to complete of the Burke-Gilman Trail in the Missing Link, provides the following background²:

“The Burke-Gilman Trail (BGT) is a regional bicycle and pedestrian trail between Golden Gardens Park in Seattle and the Sammamish River Trail in Bothell. The trail has a 1.4-mile gap through the Ballard neighborhood known as the ‘Missing Link.’ Completion of the BGT’s Missing Link has been discussed and analyzed since the 1980s. In the early 1990s, the City of Seattle included the segment in its comprehensive plan. In 2001, the Seattle City Council (Council) directed the Seattle Department of Transportation (“SDOT”) to evaluate alternative routes for the Missing Link. The Council adopted a resolution identifying Shilshole Avenue NW as the preferred route for the trail in 2003. In 2008, SDOT developed a plan to bridge that gap by building the Missing Link through Ballard’s maritime and industrial district.”

2.6 Numerous bicyclists ride through the Missing Link daily, often (but not always) to continue on the Burke-Gilman Trail. This fact has been well known to each of the Defendants for well over two decades.

2.7 In describing the Missing Link in 2019 briefing to Division I of the Washington Court of Appeals, the City admitted that users “**must traverse hazards — including...railroad tracks...through an unmarked, disorganized right-of-way.**” (emphasis added)³

2.8 The area referred to herein as “the Crash Zone” is where NW 45th St. and Shilshole Ave. NW converge beneath the Ballard Bridge (a/k/a 15th Ave. NW), including the areas

¹ *City of Seattle v. Ballard Terminal Railroad*, WA Court of Appeals, Div. 1, Case No. No. 82377-9-I, Appellant’s Brief, Pg. 11.

² *Ballard Terminal Railroad, et.al. v. City of Seattle, et. al.*, WA Court of Appeals, Div. 1, Case No. 79543-1-I, Unpublished Opinion 3/29/21, Pg. 2.

³ *MLK Labor General Teamsters Union Local NO. 174, et. al. v. City of Seattle et.al.*, WA Court of Appeals, Div. 1, Case No. 79543-1, Respondent’s Opening Brief, Pg. 3.

immediately adjacent to each side of the bridge above. The Crash Zone is within the Missing Link.

2.9 At all times material hereto, the Crash Zone has been promoted by the City as an area in which bicyclists are encouraged to ride and has been designated by the City as part of a signed bicycle route on City published bicycle maps.

2.10 Below is a true and accurate screenshot taken of the City's "Bike Web Map" showing that the Crash Zone includes a bicycle lane (not a multi-use trail) and is part of a "Signed Bike Route."



2.11 As of the date of this Complaint, the City's plan to complete the gap in the Burke-Gilman Trail through the Crash Zone to address the dangers presented to bicyclists in the Missing Link has not been implemented.

The Skewed Tracks in the Crash Zone

2.12 On the approach to the Crash Zone east of the Ballard Bridge, a set of railroad tracks run parallel along the north side of NW 45th St. On the approach to the Crash Zone west of the Ballard Bridge, the same set of tracks run parallel along the south side of Shilshole Ave. NW.

1 2.13 Within the Crash Zone itself, the orientation of the tracks to the street changes and the
2 track rails cross the street at a perilously skewed angle (an acute angle that is
3 significantly less than 90°). This is because, while the tracks continue more or less
4 straight, the street curves to the northwest as NW 45th St. converges into Shilshole Ave.
5 NW.

6 2.14 The straight tracks on a curved roadway, with a shadow-casting bridge above, creates
7 what Peter Lagerwey, who was then SDOT's Pedestrian and Bicycle Program
8 Coordinator, described in 2001 as "something unique here, a visual illusion."
9 Hereinafter, the railroad tracks as they cross through the Crash Zone will be referred
10 to as "the Skewed Tracks."
11

12 2.15 Each of the Plaintiffs herein suffered serious bodily injuries and other damages after
13 crashing while attempting to cross the Skewed Tracks by bicycle in the Crash Zone.
14

15 **Creation of Two-Way Bike Lane Through Crash Zone**

16 2.16 Prior to 2001, the Defendants were aware of numerous people crashing and being
17 injured while attempting to cross the Skewed Tracks by bicycle.

18 2.17 From approximately 2001 through late 2013, the City painted and maintained arrows
19 and bike symbols on the roadway over the Skewed Tracks in the Crash Zone. The
20 photos below illustrate some of these road markings over time.

21 A) The photo below is a true and accurate depiction of the Skewed Tracks, looking east,
22 as of August 2001:
23
24
25



B) The photo below appeared in an article dated December 29, 2009 from an online publication known as *"My Ballard"*, and is a true and accurate depiction of the Skewed Tracks as of that date. The photo, which looks west, depicts a cyclist who, the article reports, crashed on the Skewed Tracks that same day:



C) The photo below is a true and accurate depiction of the Skewed Tracks, looking east, as of April 2012:



2.18 Despite the road markings in place from approximately 2001 through 2013, the Defendants knew that people continued to regularly crash on the Skewed Tracks. Between 2005 and 2012 alone, the City received at least 18 formal injury claims from bicyclists who crashed trying to cross the Skewed Tracks in the Crash Zone. From 2001 forward, each of the Defendants was also named in at least six lawsuits involving bicyclists being injured on the Skewed Tracks in the Crash Zone.

2.19 In or about December 2013, the City began implementing modifications to NW 45th St. between 11th Ave. NW and the Ballard Bridge (the street east of the bridge), and Shilshole Ave. NW between the Ballard Bridge and NW 46th St. (the street west of the bridge) by marking out a two-way bicycle lane (hereinafter referred to as “the Bike Lane”). The Bike Lane occupied what had been the westbound lanes of NW 45th St. and Shilshole Ave. NW, and those streets became one-way eastbound for motor vehicle traffic. The Bike Lane on the street runs through the Crash Zone and over the Skewed Tracks.

2.20 According to a December 17, 2013 edition of the *Seattle Bike Blog*, SDOT described its plan for the 2013 changes in and leading to the Crash Zone, in part, as follows:

Shilshole Avenue Northwest/Northwest 45th Street between Northwest 46th Street and 11th Avenue Northwest is about to become one-way eastbound for motor vehicles, with a separate two-way bicycle lane to the north. **The Seattle Department of Transportation is making the roadway change to address longstanding safety concerns.**

Crews will install striping along the Shilshole Avenue Northwest/Northwest 45th Street segment and place new signage this weekend, Dec. 20-22.

The one-way eastbound solution comes after collaboration with area businesses. Access to all businesses will be maintained, although some routings will change due to the one-way modification. New signage will direct those heading westbound on Northwest 45th Street, east of 11th Avenue Northwest, to head north to Northwest 46th Street instead.

The identified segment of Shilshole Avenue Northwest/Northwest 45th Street is one of the highest bicycle collision locations in the city and also a heavy industrial area.

(Emphasis added)

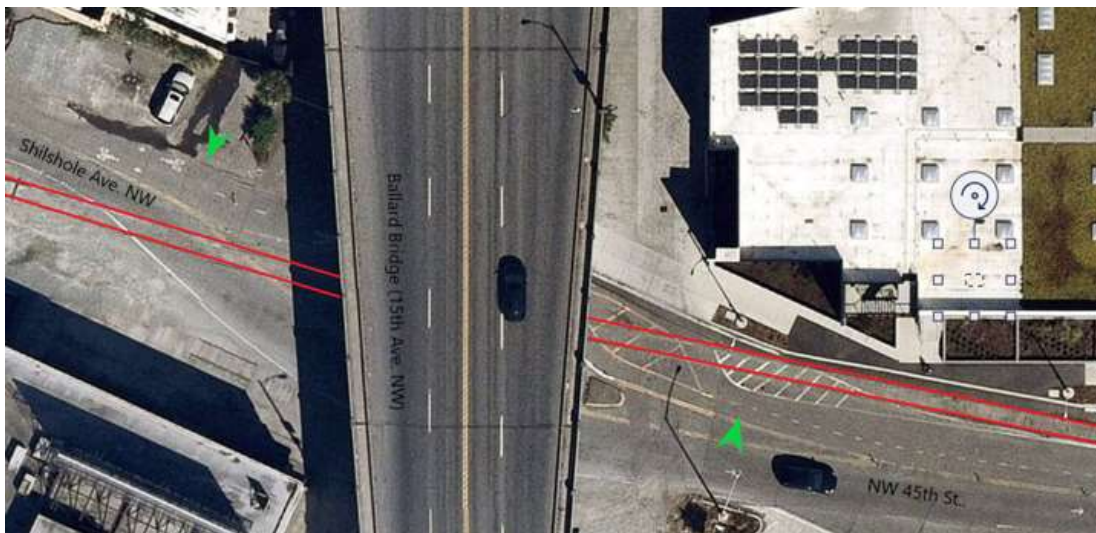
2.21 After the creation of the Bike Lane, the City made one or more modifications to it, including remarking lines on the roadway in late 2014 or early 2015, presumably in an attempt to provide additional separation in the Crash Zone between eastbound and westbound bicyclists utilizing the Bike Lane.

2.22 Below are images taken in 2018 and 2020 that accurately depict the area in and around the Crash Zone at the times stated.

A) The first image, captured by satellite in August 2020 (oriented with north at the top), shows NW 45th St. to the east of the Ballard Bridge, Shilshole Ave. NW to the west of the bridge, the Bike Lane, and the Skewed Tracks:



B) For illustrative purposes, the next photo is the same satellite image, with annotations included for the street names, the Bike Lane (green arrows) and the approximate position of the Skewed Tracks (red lines):



1 C) The photo below depicts the Crash Zone in September 2020 (looking west):
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11 D) The photo below depicts the Crash Zone in August 2018 (looking west):
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2.23 At all times relevant hereto, the City has known that the optimum safe crossing angle for bicycles over track rails is at 90 degrees. For example, a June 2011 document entitled “Basis of Design – DRAFT, Seattle Two-Way Cycle Track along Broadway” prepared by DKS Associates at the request of the City, includes the following:

Track Crossing Angles

Another design objective along the two-way cycle track is providing bicyclists with safe crossing angles over streetcar tracks. Ideally, a bicyclist should cross tracks at 90 degrees, with 70 to 90 degrees being the preferable range. An angle closer to 90 degrees reduces the chances of catching a bike tire in the tracks, and improves bicyclist safety when tracks are wet.

The referenced DKS Associates recommendation was relied upon by the City in designing the First Hill Streetcar Project. For example, in a document entitled “First Hill Streetcar Project Preliminary Hazard/Security Analysis Report” dated April 2011 (and updated May 2012), the following appears:

SYSTEM: Traffic Control Bicycle/Pedestrian SUBSYSTEM: Interface at Streetcar Stops FHSBQ: F.4 REVNO: 0		CITY OF SEATTLE  DEPARTMENT OF TRANSPORTATION FIRST HILL STREETCAR PRELIMINARY HAZARD & SECURITY ANALYSIS				PERFORMED BY: LWS DATE: 09/15/02 APPROVED BY: _____ DATE: _____ REVIEWED BY: _____ DATE: _____
GENERAL DESCRIPTION		HAZARD CAUSE/EFFECT		HAZARD RISK INDEX		CORRECTIVE ACTION
No.	Hazard Description	Potential Cause	Effect on Subsystem/System	Initial Severity-Probability	Residual Severity-Probability	Possible Controlling Measures and Remarks
F.3.b	Bicyclist slips on rails/bike tire caught in flangeway	Distracted cyclist Cyclist not crossing rails at appropriate angle Cyclist trying to race streetcar	Possible injury and/or death	I-D	I-E	Follow recommendations/Criteria outlined in the Basis of Design – Seattle Two-Way Cycle Track along Broadway, prepared by DKS Associates, distributed to the City of Seattle June 2012. Provide bicycle crossings of track as close to 90 degrees as possible, as indicated on the Channelization plans (CH series).

2.24 On information and belief, prior to designing and installing the Bike Lane as it was configured and implemented at the time each Plaintiff crashed, the City did not conduct a formal safety or hazard analysis of the Crash Zone or of the Bike Lane design

1 and did not consider and/or analyze alternatives using the approach commonly
2 referred to as Safety Hierarchy of Controls.

3 2.25 At all times relevant hereto, the Crash Zone, including the crossing of the Skewed
4 Tracks, was not reasonably safe for ordinary travel by bicycle. None of the changes
5 made by the City in the Crash Zone before the Plaintiffs' crashes that are the subject
6 of this action, including installation of and modifications to the Bike Lane, corrected
7 the perilous angle of the Skewed Track crossing, nor did they make the crossing of the
8 Skewed Tracks reasonably safe for ordinary travel by bicycle.

9
10 **The Plan to Complete the Burke-Gilman Trail in the Missing Link**

11 2.26 The process to complete the Burke-Gilman Trail has been a long one, extending over
12 decades and continues with no clear end in sight. City employees, consultants, bicycle
13 advocacy groups, businesses, and private citizens have all provided input. Eventually,
14 the City put forward a plan known as the Ballard Multimodal Corridor Project
15 (hereinafter "BMCP"). The BMCP included detailed plans for eliminating the Missing
16 Link by finally completing the Burke-Gilman Trail, including completion of the trail
17 through the Crash Zone.
18

19 2.27 Full implementation of the BMCP has been delayed due to legal actions against the City
20 by various entities, including BTR. If and when the BMCP is fully implemented, the
21 completed Burke-Gilman Trail is likely to eliminate many of the hazards that bicyclists
22 have faced in the Missing Link for decades. In particular, implementation of the full
23 BMCP is likely to significantly reduce or eliminate the past (and ongoing) danger of
24 crossing the Skewed Tracks in the Crash Zone by bicycle.
25

2.28 According to the City's May 2017 Final Environmental Impact Statement for completion of the Burke-Gilman Trail in the current Missing Link:

"Along Shilshole Ave NW and NW 45th St, existing tracks would be relocated to provide for the trail design under the Preferred and Shilshole South Alternatives."

2.29 In a Seattle City Council Sustainability & Transportation Committee meeting held on February 15, 2017⁴, the following colloquy took place as part of SDOT's detailed explanation of the City's plan to complete the Burke-Gilman Trail in the Missing Link (found at 14:01 through 14:24):

Mark Mazzola, SDOT's Environmental Manager [while circling the Crash Zone on a plan drawing]: *"Continuing along NW 45th, under the Ballard Bridge, so this is where we would eliminate the conflict point with the railroad tracks that is happening here currently."*

City Councilmember Mike O'Brien: ***"So that's where the current trail crosses the railroad tracks and that's where we have a lot of crashes."***

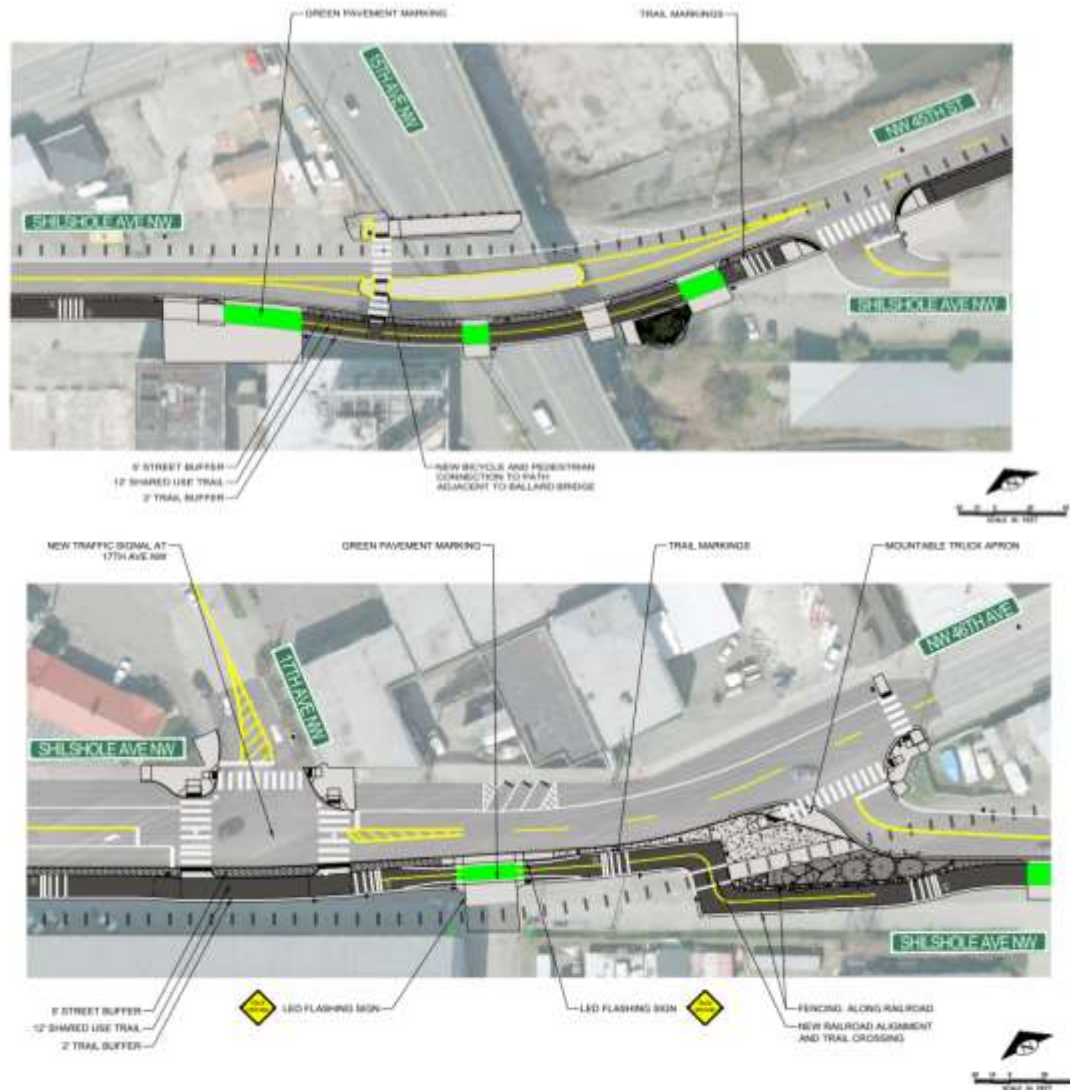
Mark Mazzola: ***"That's correct."***

(Emphasis added)

2.30 Per the City's 2018 "Ballard Multimodal Corridor Graphic Design Plans"⁵, the following two drawings depict how the continuation of the Burke-Gilman Trail in the Missing Link had, until recently, been planned: 1) through the current Crash Zone (first drawing); and 2) over the Skewed Tracks (second drawing):

⁴ Found at: www.seattlechannel.org/mayor-and-council/city-council/2016/2017-sustainability-and-transportation-committee?videoid=x70666.

⁵ See: www.seattle.gov/Documents/Departments/SDOT/BikeProgram/BGT/BGT_95GraphicPlans_2018-0323.pdf



2.31 On November 1, 2021, SDOT announced a revised plan for the BMCP that is different from the plan depicted in paragraph 2.30 above (which was the subject of the May 2017 Final Environmental Impact Statement)⁶. The new plan shows the to-be completed Burke-Gilman Trail as crossing the Skewed Tracks at a different location from the earlier plan and is said to “[eliminate] the need to relocate railroad tracks on

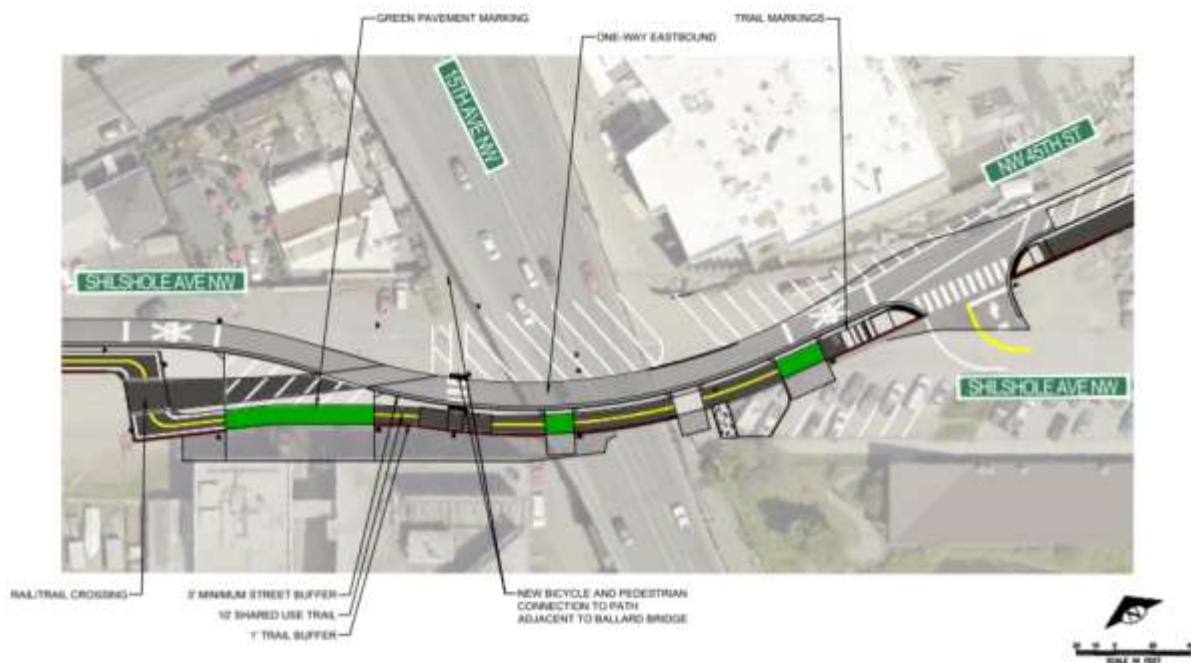
⁶ See: [Sdotblog.seattle.gov/2021/11/01/levy-dollars-at-work-refined-burke-gilman-trail-missing-link-design-allows-us-to-move-this-safety-project-forward-and-resume-construction-as-soon-as-next-year/](https://sdotblog.seattle.gov/2021/11/01/levy-dollars-at-work-refined-burke-gilman-trail-missing-link-design-allows-us-to-move-this-safety-project-forward-and-resume-construction-as-soon-as-next-year/); and www.seattle.gov/Documents/Departments/SDOT/BikeProgram/BGT/BMCPPlans1_2.pdf

Shilshole Ave NW and NW 45th St.” According to SDOT’s announcement of the revised plan, Mayor Jenny Durkin said:

Completing the Burke-Gilman Trail Missing Link is an important and too long delayed piece of safety infrastructure in Seattle. By redesigning the Missing Link we will finally be able to give the bike, walking and rolling community a safe route to enjoy the treasure that is the Burke-Gilman trail. After continued legal challenges, these next steps will bring us tangibly closer to finishing this crucial project.

(Emphasis added)

2.32 The drawing below, publicly released by SDOT on November 1, 2021, depicts how the continuation of the Burke-Gilman Trail in the Missing Link is being planned (as of the filing of this Complaint) both through the Crash Zone and over the Skewed Tracks at approximately a 90° angle:



2.33 On or about December 9, 2021, the coalition of Ballard businesses (including BTR) that have, for many years, been actively opposing plans to complete the Burke-Gilman Trail

1 in the Missing Link, instituted a new legal challenge to the revised plan discussed in
2 paragraphs 2.31 and 2.32 above.

3 **With BMCP Implementation Stalled, Bicyclists Continue Being Injured in the Crash Zone**

4
5 2.34 Despite the creation of the Bike Lane in or about late 2013, bicyclists continued to crash
6 on the Skewed Tracks in the Crash Zone. Each of the Defendants has been aware of
7 this fact.

8 2.35 On information and belief, in the five years between mid-2015 and mid-2020, the
9 Seattle Fire Department responded to approximately 39 incidents involving bicyclists
10 crashing on the Skewed Tracks in the Crash Zone. On further information and belief,
11 there were numerous additional unreported bicycle crashes on the Skewed Tracks in
12 the Crash Zone during this timeframe to which Seattle Fire Department was not
13 dispatched.
14

15 2.36 An article in the Seattle Times dated August 17, 2016 confirmed that SDOT does not
16 collect “solid data” on bicycle crashes on track rails imbedded in roadways and noted
17 that: “Wrecks go unreported.” Consistently, in a September 4, 2019 report prepared
18 by SDOT’s Seattle Bicycle Advisory Board entitled Streetcar Spot Enhancements: How
19 SDOT is Improving Bicycle Safety, the City acknowledged that bicycle crashes involving
20 imbedded track rails are underreported.
21

22 2.37 The City received notice of at least four formal injury claims from bicyclists who crashed
23 at the Skewed Tracks in the Crash Zone between May 2014 and May 2016 (City of
24 Seattle Claim Nos. C-92730, C-89875, C-91880 and C-90834), with one of those claims
25 (C-92730) becoming the subject of a lawsuit against both of the Defendants.

1 2.38 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash
2 Zone after the City received notice of the claims referenced in paragraph 2.37 above,
3 and after the City and BTR were named as defendants regarding Claim No. C-92730.

4 2.39 On June 1, 2014, after the City began installing the Bike Lane, Michael Marian, the
5 owner of a business adjacent to the Crash Zone, sent the email shown below to SDOT's
6 then Chief Traffic Engineer, Dongho Chang, and sent courtesy copies of the email to
7 the media and most or all of the members of the Seattle City Council. The email
8 included photos and a video link documenting numerous people who had crashed on
9 the Skewed Tracks in the Crash Zone:
10

From: Michael Marian

<mike@marianbuilt.com<<mailto:mike@marianbuilt.com>><<mailto:mike@marianbuilt.com>>>

Date: June 1, 2014, 9:25:13 AM PDT

To: Dong Ho Chang

<donghochang@seattle.gov<<mailto:donghochang@seattle.gov>><<mailto:donghochang@seattle.gov>>>

Cc: "<getjesse@king5.com<<mailto:getjesse@king5.com>><<mailto:getjesse@king5.com>>>"

<getjesse@king5.com<<mailto:getjesse@king5.com>><<mailto:getjesse@king5.com>>>, "

<tom@seattlebikeblog.com<<mailto:tom@seattlebikeblog.com>><<mailto:tom@seattlebikeblog.com>>>

<tom@seattlebikeblog.com<<mailto:tom@seattlebikeblog.com>><<mailto:tom@seattlebikeblog.com>>>

>>, "<684-road@seattle.gov<<mailto:684-road@seattle.gov>><<mailto:684-road@seattle.gov>>>

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<construction.coordination@seattle.gov<<mailto:construction.coordination@seattle.gov>><<mailto:construction.coordination@seattle.gov>>>

<construction.coordination@seattle.gov<<mailto:construction.coordination@seattle.gov>><<mailto:construction.coordination@seattle.gov>>>

>>, <nick.licata@seattle.gov<<mailto:nick.licata@seattle.gov>><<mailto:nick.licata@seattle.gov>>>

<sally.bagshaw@seattle.gov<<mailto:sally.bagshaw@seattle.gov>><<mailto:sally.bagshaw@seattle.gov>>>

<sally.clark@seattle.gov<<mailto:sally.clark@seattle.gov>><<mailto:sally.clark@seattle.gov>>>

<tim.burgess@seattle.gov<<mailto:tim.burgess@seattle.gov>><<mailto:tim.burgess@seattle.gov>>>

<bruce.harrell@seattle.gov<<mailto:bruce.harrell@seattle.gov>><<mailto:bruce.harrell@seattle.gov>>>

<jean.godden@seattle.gov<<mailto:jean.godden@seattle.gov>><<mailto:jean.godden@seattle.gov>>>

<mike.obrien@seattle.gov<<mailto:mike.obrien@seattle.gov>><<mailto:mike.obrien@seattle.gov>>>

<tom.rasmussen@seattle.gov<<mailto:tom.rasmussen@seattle.gov>><<mailto:tom.rasmussen@seattle.gov>>>

<e.gov>,"

<Kshama.Sawant@seattle.gov<<mailto:Kshama.Sawant@seattle.gov>><<mailto:Kshama.Sawant@seattle.gov>>>

<attle.gov>

Subject: PEOPLE ARE GETTING HURT

To anyone at the Seattle Department of Transportation concerned with public safety,

Shilshole Ave NW under the Ballard bridge is a very dangerous place for bicycles. SDOT has made Shilshole a one way street in an attempt to make it safer. They have installed islands, repaved, and re-painted existing traffic lines. But they have done nothing, NOTHING to direct bicycles across the tracks perpendicularly. I would think some cones glued to the roadway to direct this, while still letting the train through, would be sufficient. Whatever the solution is, it needs to happen today.

I will be actively using social media to get the word out about this, as well as taking as many pictures and getting as many statements as possible. I have cc'd various contacts in the local media. To them I would say 'bring your cameras down, you WILL see people fall and get hurt'. I will also be more than willing to be a witness to any lawsuits brought forth against the city.

This is so bad I just can't believe it's going on.

2.40 In response to the email discussed in paragraph 2.39 above, Mr. Chang responded the same day on behalf of SDOT by saying: *"Our crews have been repainting and installing signs yesterday and should be finishing up under the bridge today. Thanks for letting*

1 me know. This is exactly the reason why we are making the **temporary changes along**
2 **45th**. I appreciate your concern.” (Emphasis added).

3 The same day, Mr. Marian responded:

4 “Did you see the attached pictures?!

5 *Painting lines IS NOT SUFFICIENT!*

6 *There are lines there now, repainting is not good enough!*

7 *Get there today and install glue down cones to force the bicycles to*
8 *cross perpendicularly.*

9 *I have met you before, and I think highly of your character, but I will do*
10 *everything I can to see that you are held accountable for the hundreds*
11 *of injuries because you refuse to better direct traffic.*

12 *Painting lines is not a sufficient answer.”*

13 (Emphasis original)

14 Mr. Chang then replied:

15 “This is a high priority location to address and I am very committed to
16 making the street safe. Please hold me accountable, as my job is to
17 ensure our streets are safe for all users. I'll review the location once
the work is done to see how the location is working.”

18 The next day, June 2, 2014, Mr. Chang replied further:

19 “Thank you for your time yesterday talking with me. I definitely heard
20 you loud and clear and am taking your concerns seriously. Safety is
21 SDOT’s highest priority and we have a goal of zero fatality and serious
22 injury by 2030. I sincerely understand your urgency and outrage about
23 the bicycle riders who have difficulty and fall crossing the rail road
24 tracks under the Ballard Bridge on NW 45th Street. I am directly
25 accountable for addressing this situation and am committed to doing
exactly that. I talked with our field crews and they confirmed that all
riders were following the newly marked crossing that was completed
yesterday afternoon. This section of the NW 45th Street has been one
of the highest bicycle fall locations in our city. I am hoping that the
interim changes that have been made will help our residents navigate

1 *this street safely and more easily as we continue to finalize the*
2 *environmental review of the Burke Gilman Trail project."*

3 2.41 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash
4 Zone after the email correspondence referenced in paragraphs 2.39 and 2.40 above.

5 2.42 On June 4, 2014, KIRO TV News aired a story on the Crash Zone which can be found at
6 the following link: [https://www.kiro7.com/news/sdot-makes-temporary-fix-](https://www.kiro7.com/news/sdot-makes-temporary-fix-dangerous-bike-path/81705910/)
7 [dangerous-bike-path/81705910/](https://www.kiro7.com/news/sdot-makes-temporary-fix-dangerous-bike-path/81705910/). The report recounts the concerns Mr. Marian raised
8 in his correspondence with Mr. Chang. Mr. Chang was interviewed for the story and,
9 in the written version of the report is quoted as saying: ***"It's a temporary fix absolutely.***
10 *It's something that we want to solve ASAP."* (Emphasis added)
11

12 2.43 All of the Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the
13 Crash Zone after the news report discussed in paragraph 2.42 above and more than
14 four years after Mr. Chang described the Bike Lane as a "temporary fix."
15

16 2.44 The following appeared in a March 2015 edition of the Cascade Courier, the newsletter
17 of the Cascade Bicycle Club, a Seattle-based non-profit and the largest statewide
18 bicycling organization in the United States:
19
20
21
22
23
24
25



2.45 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash Zone after the publication of the newsletter referenced in paragraph 2.44 above.

2.46 On information and belief, on June 26, 2015, Brock Howell of Cascade Bicycle Club and Kevin Carrabine, of the group Friends of the Burke-Gilman Trail, met with SDOT's Mr. Chang under the Ballard Bridge to discuss safety issues. Then BTR owner Byron Cole was invited to the meeting but failed to appear. At the meeting, the group discussed, among other things, the ideas of SDOT applying green paint in the Bike Lane across the Skewed Track and adding more plastic flex posts to encourage crossing the Skewed Tracks at closer to a 90° angle.

2.47 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash Zone after the meeting described in paragraph 2.46 above. Further, SDOT did not actually add any green paint to the Bike Lane or make any consequential changes to the plastic flex posts until October 2020, after each of the Plaintiffs herein crashed.

2.48 The following photograph, which depicts a banner hanging from the Ballard Bridge directly over the Crash Zone with the words "FIX THE MISSING LINK", appeared in a July 11, 2016 "Friends of the Burke-Gilman Trail-Ballard" Facebook group post:



2.49 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash Zone after the hanging of the banner pictured in paragraph 2.48 above.

2.50 On January 5, 2016, an individual named Saskia de Vries submitted a comment/request to SDOT regarding the Bike Lane in the Crash Zone, which stated, in part:

About two years ago, you put in a terribly designed bike lane on Shilshole/45th Ave NW. This is dangerous piece of infrastructure that puts people's lives in danger...Please...remove the bike lane on Shilshole/45th Ave. This is poorly designed, and moreover, the laws have never been enforced on this stretch of road. So long as cars continue to drive in the wrong direction and illegally cross into the bike lane, this will always be a death trap. If you insist of keeping this piece of crap, for the love of God replace the [plastic flex posts]. How many are still standing? Do you even know? Why would you put them in there if you weren't going to keep them there? You should be there every week replacing [plastic flex posts]... Please? Pretty please? Why should I even have to beg. It's appalling and disgraceful.

1 2.51 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash
2 Zone after SDOT received Ms. de Vries' comments in paragraph 2.50 above.

3 2.52 On May 11, 2016, Kevin Carrabine, of the group Friends of the Burke-Gilman Trail, sent
4 an email regarding portions of the Missing Link to SDOT's Mr. Chang. The email stated,
5 in part:

6 *It's been a while since you, Brock, myself met along the NW 45th Protected*
7 *Bike Lane and looked at the volumes of people bicycling and walking along*
8 *the route. You might remember, you wondered then about ...:*
9 *- 'green striping' the RR track crossing under the Ballard Bridge*

10 *. . .*
11 *Well, since then, use has only increased along this corridor and people*
12 *bicycling continue to crash.*

13 2.53 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash
14 Zone after Mr. Carrabine's email. Further, SDOT did not add any green paint to the Bike
15 Lane until October 2020, after each of the Plaintiffs herein crashed.

16 2.54 In or about 2016, SDOT collected hundreds of public comments for the Environmental
17 Impact Statement that was part of the process for completion of the Burke-Gilman
18 Trail. A large number of comments raised concerns about the dangers of crossing the
19 Skewed Tracks in the Crash Zone and described experiences of crashing on the tracks
20 or knowing about others who have crashed in that location.

21 2.55 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash
22 Zone after the City received the comments referenced in paragraph 2.54 above as part
23 of the Environmental Impact Statement process.

24 2.56 On information and belief, in late July 2016, SDOT's Mr. Chang was in the vicinity of the
25 Bike Lane in the Crash Zone when he encountered and spoke to an individual named

1 Kenneth (or Kevin) Smith. Mr. Smith was staying in an RV parked beneath the Ballard
2 Bridge in the Crash Zone and became concerned about the frequency of bicycle crashes
3 on the Skewed Tracks. Mr. Smith had taken it upon himself to place traffic cones and
4 construction ribbons in order to help better guide cyclists over the Skewed Tracks.

5 Below is a true and accurate copy of the photograph taken by Mr. Chang of the cones
6 and ribbons placed by Mr. Smith:
7



17 2.57 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash
18 Zone after the encounter between Mr. Smith and Mr. Chang described in paragraph
19 2.56 above.
20

21 2.58 At the February 15, 2017 Seattle City Council Sustainability & Transportation
22 Committee meeting discussed earlier in this Complaint, citizens and groups had a
23 chance to express their views on completion of the Burke-Gilman Trail. Several shared
24 their experiences of crashing on the Skewed Tracks in the Crash Zone. At video time
25

1 stamps 50:39 through 51:02, Kelsey Mesher, a representative of Cascade Bicycle Club,
 2 made the following plea to the committee members and leaders at SDOT:

3 What really needs to be prioritized is fixing the crossing underneath the
 4 Ballard Bridge over the tracks. We don't need to talk about why, this has
 5 gone on for too long. But we've waited to fix that and so if there can be a
 6 priority to fix that first as implementation begins, that would be a win for
 7 everyone in this room and in our city.

8 2.59 In closing out the City's Sustainability & Transportation Committee meeting of
 9 February 15, 2017, City Councilmember Mike O'Brien asked the following of SDOT
 10 representatives (at video time stamps 1:03:35 through 1:03:59):

11 I'm interested in seeing if there are pieces of this that could be
 12 accelerated, certainly the current railroad crossing beneath the Ballard
 13 Bridge is an area of ongoing concern...I'm really interested, as you work
 14 on final design, if there are pieces of this that can start sooner rather than
 15 later.

16 2.60 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash
 17 Zone after the February 15, 2017 City Council Committee meeting.

18 2.61 As part of the safety considerations for completing the Burke-Gilman Trail, the City's
 19 May 2017 Final Environmental Impact Statement ("FEIS") admitted as follows:

20 Nonmotorized safety in the study area is also affected by roadway
 21 conditions, including the presence of railroad tracks and other obstacles.
 22 Incident response data provided by the Seattle Fire Department indicate
 23 locations in the study area where roadway conditions could create unsafe
 24 passage for bicyclists and pedestrians (Seattle Fire Department, 2015).
 25 Between January 2012 and December 2014, there were 45 incidents in
 the study area. However, it is likely that additional incidents caused by
 roadway conditions occurred but were not recorded. As shown in Figure
 7-10, incident responses have been concentrated along NW 45th St and
 Shilshole Ave NW, and at the intersections of NW 45th St/14th Ave NW
 and under the Ballard Bridge. **The presence of railroad tracks in these
 locations presents a safety concern for nonmotorized users, particularly
 bicyclists, as bicycle tires can become trapped between the railroad
 tracks and the street.**

(Emphasis added) The below illustration is a true and accurate copy of Figure 7-10 referenced in the FEIS:



Figure 7-10. Study Area Nonmotorized Incident Responses

BURR-GILMAN TRAIL, MISSING LINK

7-24
MAY 2017

2.62 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash Zone after the publication of the May 2017 Final Environmental Impact Statement.

2.63 On or about July 12, 2019, an individual named Abigail Nelson called SDOT to report her boyfriend's bike crash on the Skewed Tracks. According to an SDOT call log:

Caller Abigail is reporting that her boyfriend had a serious injury as he was riding his bike under the North side of the Ballard bridge in the bike lane. At this location the bike lane crosses over the rail for Ballard Terminal Railroad. He fell off his bike and was injured because of the rails in the road here. Abigail notes that the doctor had Swedish Medical Center in Ballard said the medical center sees hundreds of such accidents per year often involving this exact location. Abigail would like to know what steps will/may be taken to make bike travel through this area and in particular over the rails safer and to mitigate risk of injury.

1 2.64 Plaintiffs Kim, Mortensen, Murphy, Kelley, Oldenburger and Nolan all crashed while
 2 attempting to cross the Skewed Tracks in the Crash Zone after Ms. Nelson placed her
 3 call to SDOT described in paragraph 2.63 above.

4 2.65 On or about April 13, 2020, an individual named Michael Smuga was injured while
 5 attempting to cross the Skewed Tracks in the Crash Zone. Mr. Smuga later made a
 6 formal injury claim to the City (Claim No. C-98904). He sent the following inquiry to
 7 SDOT's Mr. Chang on May 1, 2020:
 8

9 Hi Dongho - I was biking in the missing link area (Burke Gillman under
 10 Ballard bridge) on [April 13, 2020] and my front wheel got caught in the
 11 unmarked train track. As a result, I crashed, hitting my head against the
 12 pavement and ended up with injuries all over my right side of my body. I
 13 also damaged my shifters, front derailleur, helmet and bike clothes (about
 14 \$2300 in damages total). I filed a claim with the city, hoping to recover
 15 some of the damages. The next day I texted with a couple of friends and
 16 they all had stories about either crashing in the same spot, or their
 17 friends/family crashing in the same spot. That stretch of the road is really
 18 dangerous: the bike trail seems to be crossing the train track at such an
 19 angle where it's not hard to get your bike wheel to get caught without
 20 realizing that possibility. Do you happen to know if there any efforts to fix
 21 that bike trail?

22 On May 5, 2020, Mr. Smuga received a response from "Claire," believed to be Claire
 23 Wendle, writing on behalf of SDOT's BMCP team (SDOT's Darrell Bulmer was copied on
 24 these emails):
 25

26 Thank you for reporting your bicycle accident and sharing your concerns.
 27 The Ballard Multimodal Corridor project includes completing the missing
 28 section of the Burke Gilman Trail along Shilshole Ave NW and NW Market
 29 St. Much of the future trail alignment along Shilshole Ave NW will not
 30 intersect with the train tracks and when it does, it will be at a 90-degree
 31 angle. We've attached some draft plans for your reference. Construction
 32 on this section of the trail is not scheduled to begin until at least 2021. **In
 33 the meantime, we will look into signage to make the train tracks more
 34 visible to bicyclists.**

(Emphasis added)

Mr. Smuga responded to Ms. Wendle on May 6, 2020, in part, as follows:

Thank you for looking into making the tracks more visible. To be perfectly frank, I did see them (as I bike that path about once a week) but the crash resulted from the front wheel somehow slipping into one of the tracks.

I think the real issue is the angle at which the bike lane is crossing the tracks; it's not a perfect 90 degree angle, so there's a high probability that just turning your handlebars a little bit while crossing the tracks, or the bike skidding in all the dust caused by nearby construction, will result in the wheel accidentally slipping into the track. Once it's in track, the crash is guaranteed.

Are the tracks still in use? If not, would it be possible to fill them with some sort of material, eliminating the possibility of the bike wheel getting caught?

Ms. Wendle responded on May 11, 2020, in part, as follows:

We understand your concerns for bicycle safety along that section of Shilshole Ave. The tracks are privately owned by the Ballard Terminal Railroad Company and are still actively used, so we are not able to fill them with material. **In the meantime, we can look into additional safety measures such as signage that advise caution leading up to the tracks.**

(Emphasis added)

2.66 Plaintiffs Kim, Mortensen, Murphy, Kelley, Oldenburger and Nolan all crashed while attempting to cross the Skewed Tracks in the Crash Zone after Mr. Smuga placed the City on notice of his crash and after Mr. Smuga's correspondence with Mr. Chang and Ms. Wendle, discussed in paragraph 2.65 above. Further, no additional safety measures were taken or signs placed by the City in the Crash Zone until after all Plaintiffs suffered their crashes.

2.67 In May 2020, Plaintiff Chaeji Kim wrote to SDOT about her crash on the Skewed Tracks: "[M]any passing bikers had told me they fell on the same exact place. It baffles my

mind that there are open train tracks that cause a hazard to bikers ON a bike trail.”

SDOT’s Gretchen Conrad responded to Ms. Kim with stock language used in responses to others who have complained about the Skewed Tracks in the Crash Zone (admitting that the area of concern is on the “roadway,” not the Burke-Gilman Trail):

This is a challenging section of roadway due to the limited right-of-way and the active railroad tracks...We will ask SDOT inspectors to review and have the area checked for missing pylons, monitored and cleaned. We understand it can still be a challenge negotiating the roadway at this particular location and when the Ballard Multimodal Corridor project completes its work in this area, it will provide a much better crossing for cyclists heading into Ballard on this trail...

2.68 Plaintiffs Murphy, Kelley, Oldenburger and Nolan all crashed while attempting to cross the Skewed Tracks in the Crash Zone after the correspondence between Ms. Kim and Ms. Conrad discussed in paragraph 2.67 above.

2.69 In early August 2020, SDOT received the following inquiry/comment from a concerned citizen named Jennifer Doscher:

Hi! I’ve been working at PCC Ballard for about four months now and I’ve seen so many people fall, or after they’ve fallen, while cycling behind the store on Shilshole Ave NW, under the 15th Ave bridge, right before/after it joins with NW 45th St. There are train tracks in this spot that curve slightly. Between the tracks, sand, fading paint, and strong shadows (contrasting with bright sunlight,) even experienced cyclists fall here, often. Just today, as I went to take trash to the dumpsters, a woman was there attending to her injuries with a friend, and a moment later an avid cyclist (expensive bike, clip shoes, full riding outfit,) fall and skid on his shoulder. The jersey was shredded but saved his skin. He accepted first aid from the other woman. Please, please consider posting signs and painting something bright or reflective alongside the tracks so people don’t get their tired caught. The asphalt is also not even/level with the tracks, and bike traffic is bi-directional right where the curve is. I do hope you’ll visit the area to watch for an hour or more, as well as bike past it yourselves, so you can fully understand the issue. The falls could be minor or severe, and the same can be said for bicycle damage as well. Thank you! A concerned bystander and resident.

1 A member of SDOT's BMCP team responded, in part, as follows:

2
3 *"The Ballard Multimodal Corridor project includes completing the missing*
4 *section of the Burke Gilman Trail along Shilshole Ave NW and NW Market*
5 *St. Much of the future trail alignment along Shilshole Ave NW will not*
6 *intersect with the train tracks and when it does, it will be at a 90-degree*
7 *angle. We have attached some draft plans for your reference.*

8
9 *Construction on this section of the trail is not scheduled to begin until at*
10 *least 2022. In the meantime, we will look into signage to make the train*
11 *tracks more visible to bicyclists."*

12 (Emphasis added)

13
14 2.70 Plaintiffs Kelley, Oldenburger and Nolan crashed while attempting to cross the Skewed
15 Tracks in the Crash Zone after Ms. Doscher's submission discussed in paragraph 2.69
16 above. Further, no new signs were posted by the City until after all Plaintiffs crashed.

17 Failure to Maintain Crash Zone Infrastructure

18 2.71 The City's process for full implementation of the BMCP was delayed (and continues to
19 be delayed) by litigation between the City and a coalition of various businesses
20 (including BTR). Meanwhile, in the years after the City created the Bike Lane,
21 infrastructure in the Crash Zone over the Skewed Tracks deteriorated. For example,
22 the paint on the roadway faded or was otherwise obscured, and warning signs were
23 vandalized or removed. Many of the plastic flex posts, which had ostensibly been
24 installed to delineate the Bike Lane and help channel bicycle traffic over the Skewed
25 Tracks, were broken or missing. The deterioration in the Crash Zone made this already
complex and dangerous roadway even more confusing and dangerous for bicyclists.

2.72 From at least mid-2018 through late-2020, the deterioration of the Crash Zone
infrastructure had become excessive. The City did not perform significant maintenance

or repairs or make meaningful updates or safety improvements to the streets in the Crash Zone over the Skewed Tracks (including signs, road markings and plastic flex posts) until after all Plaintiffs crashed on the Skewed Tracks.

Changes Made by the City in the Crash Zone After Plaintiffs' Crashes

2.73 Starting in or about October 2020, after each of the Plaintiffs crashed on the Skewed Tracks in the Crash Zone, the City made what it likely intended as safety-related changes to the area. These changes included the delineation of a different pathway/angle across the Skewed Tracks with new Bike Lane markings (including green paint). Plastic flex posts were also added. Further, the City installed (or reinstalled) warning signs that were not present when each of the Plaintiffs crashed. On information and belief, at least some of these changes had been the subject of SDOT Work Order No. 799117.

2.74 Some of the changes discussed in paragraph 2.73 above can be seen in images below, which accurately reflect conditions at the time each photo was taken:

A) The satellite image below, taken in March 2021, shows Bike Lane markings applied in or about October 2020 under Work Order No. 799117:



B) Shown in the next two images, each taken in February 2021 looking east toward the Ballard Bridge, are three warning signs in or approaching the Crash Zone, none of which were present when any of the Plaintiffs herein crashed while attempting to cross the Skewed Tracks:



C) For comparison, the next three photos highlight the eastbound path of the Bike Lane beneath the Ballard Bridge. The first photo, taken looking east, shows the road markings applied by SDOT in late 2020 (Google Street View image captured

in July 2021). The second photo (also a Google Street View image captured in July 2021) shows road markings from a different angle (taken looking north). The third photo, taken looking east, shows the road markings that existed at the time each of the Plaintiffs crashed (photo taken on September 14, 2020):





D) The photo below, taken on December 13, 2020 looking west, shows the road markings applied in late 2020 just east of the Ballard Bridge. The photo also shows a railroad crossing sign in the Crash Zone that was not present when any of the Plaintiffs herein crashed while attempting to cross the Skewed Tracks:



- 1 E) The next photo, also taken on December 13, 2020 and looking west, shows
 2 another sign on the approach to the Crash Zone that was not present at the time
 3 each of the Plaintiffs herein crashed while attempting to cross the Skewed Tracks:



- 19 F) By comparison, the first photo below, taken in early September 2020, shows the
 20 same westbound view as the two photos directly above, but with no signs in place
 21 at that time. The second photo below, which is captured from a July 16, 2020 King5
 22 TV video news story about the Missing Link, shows the same area from a different
 23 angle, again with no warning signs in place at that time:
 24
 25



2.75 None of the changes described in paragraph 2.74 above or depicted photos in subparagraphs A-F above, constitute “subsequent remedial measures” under Washington Rule of Evidence 407. This is because, among other reasons, the City had begun planning for these very changes in the Crash Zone before many of the Plaintiffs crashed. Further, the stated purpose of Work Order No. 799117 was to address changes to the area after completion of a PCC Market adjacent near the Crash Zone. Paragraphs 2.76 through 2.80 below highlight some of the history of the late 2020 changes in the Crash Zone.

2.76 A document entitled "TRH Transportation Operations Work Order #799117" shows that Work Order No. 799117 was "initiated" on December 23, 2019: "Problem/Deficiency Description:" shows as "No Problem or routine." The "Work Description" of the document states the purpose the work order to be: "Additional channelization to clarify two-way bike lane and one-way vehicular operations, given improvements constructed by the Ballard Blocks development on the north side of 45th." (Emphasis added).

2.77 Plaintiffs Kim, Mortensen, Murphy, Kelley, Oldenburger and Nolan all crashed after the initiation date of Work Order 799117.

2.78 In a September 2, 2020 email, SDOT's Andrew Merkley wrote to SDOT's Venu Nemani, that Work Order No. 799117:

...was approved 1/6/20 and I added to the layout request list and asked Jason/Chris to layout, and that is where it has sat since. I think weather and COVID has contributed to the delay.

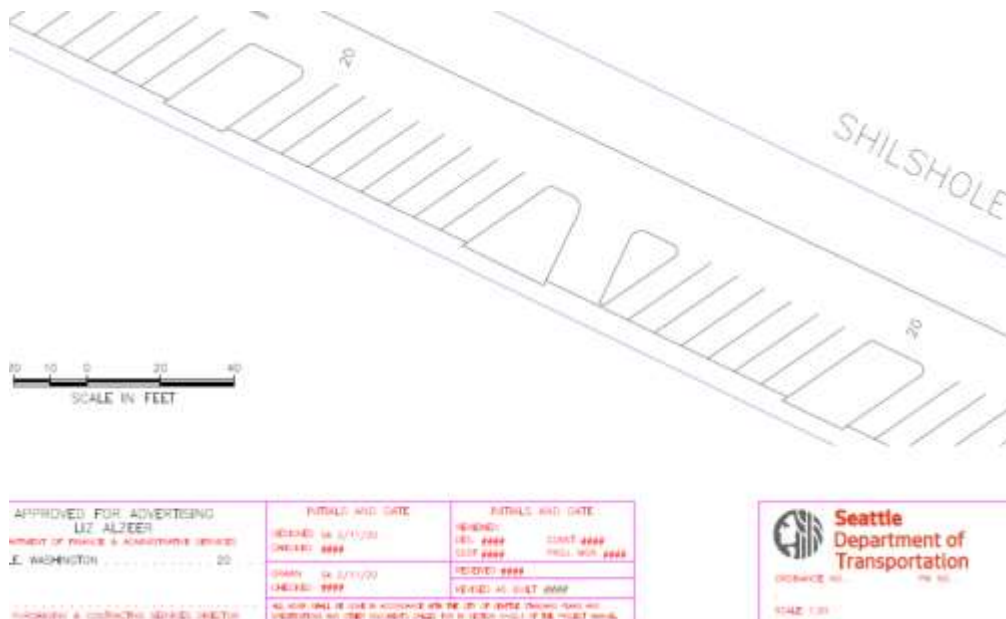
Since the request originally stemmed from clarifying parking and wear from the construction of PCC, we minimized the scope as Burke Gilman Missing Link was anticipated to make larger changes to the street in the near term. The design mostly just hatched out the dead space next to PCC. I'll work on getting the design updated to better reflect the refresh of bike lane chann we discussed.

(Emphasis added)

2.79 Plaintiffs Kim, Mortensen, Murphy, Kelley, Oldenburger and Nolan all crashed while attempting to cross the Skewed Tracks in the Crash Zone after the approval date of Work Order 799117.

2.80 The images below are true and accurate excerpts from SDOT Work Order 799117 identified as "799117-Sign-Chann Inst1" depicting planned changes in and near the Crash Zone.

A) The first image shows that the original design/drawn date for Work Oder 799117 was February 11, 2020:



B) The next image depicts elements of the changes in the Crash Zone that were being planned at the time:



2.81 In an August 27, 2020 email sent to Matt Beaulieu of SDOT's Traffic Operations and to SDOT's then Chief Traffic Engineer, Dongho Chang, SDOT's Burke-Gilman Trail Project Manager Louisa Miller wrote:

As you probably know, we continue to see injuries under the Ballard Bridge where bicyclists cross the railroad track...Given that the [BMCP] project won't be built for at least another year, senior staff (including [SDOT Director Sam Zimbabwe]) would like to see safety improvements at this location before the wet season. I think they are open to modifications of the existing bike lane design and I wanted to talk with you about how these types of maintenance projects typically get designed. Is this in your court? Laeth's group?

2.82 Plaintiffs Nolan and Oldenburger crashed while attempting to cross the Skewed Tracks in the Crash Zone after Ms. Miller's August 27, 2020 email, referenced in paragraph 2.81.

2.83 SDOT's Marilyn Yim sent a series of social media screenshots via text message on August 31, 2020 to Louisa Miller⁷. The numerous screenshots describe the extreme dangers to bicyclists in the Crash Zone and the text messages between Ms. Yim and

⁷ This according to an October 6, 2020 internal SDOT email.

Ms. Miller show that there had been then-recent discussions within SDOT about making changes in this location.

2.84 Plaintiff Nolan crashed while attempting to cross the Skewed Tracks in the Crash Zone after the August 31, 2020 text correspondence between Ms. Yim and Ms. Miller.

2.85 In a September 11, 2020 internal SDOT email with the subject "BGT: Safety Improvements", Louisa Miller wrote the following:

Following up on our last meeting with Sam [SDOT's Director Sam Zimbabwe], I've been working with Matt and his team to get safety improvements for the BGT bike/rail crossing under the Ballard Bridge. We've met several times to discuss design options and expect a design and [work order] to be complete sometime next week.

I wanted to confirm what I heard from Sam - that due to the crashes at this location, this area should be prioritized for maintenance improvements this year. This work was not part of the prioritized lists, so I just wanted to confirm before we issue the WO. The thought was to label it as an "emergent issue" due to the circumstances.

The planned improvements include: realignment of [channel], RPMs, new posts, green driveway markings, and rail/bike crossing signage.

Flangeway Gaps and Gap Fillers

2.86 A flangeway is the gap between the rail and the pavement which runs along the length of each embedded track rail. This gap is designed to accommodate a railcar's wheel flange as the car rolls along the rail. Like a typical flangeway gap, the width of the flangeway gap on the Skewed Tracks in the Crash Zone presents significant hazards for the relatively narrow width of most bicycle wheels/tires. Hazards to bicyclists due to flangeway gaps include deflection and entrapment of bicycle wheels/tires that cause a rider to lose dynamic stability and crash. At all times relevant hereto, each of the Defendants was aware of these hazards.

1 2.87 Apparatuses often referred to as flangeway gap fillers (usually made of a compressible
2 rubber or polymer compound) are used throughout the United States at railroad
3 crossings as a relatively inexpensive way to protect against bicycle wheel/tire
4 deflections, entrapments and other mishaps because they provide a nearly flush
5 surface for bicycles to traverse, yet they compress under the weight of a rail car's wheel
6 flange, allowing for normal railway operations.

7
8 2.88 Below is photo taken in September 2020 that accurately depicts a portion of the
9 flangeway gaps of the Skewed Tracks on the street within the Crash Zone:



21 2.89 Despite the opportunity and feasibility to do so, at no point in time did either of the
22 Defendants install flangeway gap fillers in the area where the street crosses the
23 Skewed Tracks in the Crash Zone.

24 2.90 The City has known of flangeway gap fillers as a safety measure for at least 18 years.
25 For example, in a 2003 document prepared by SDOT entitled Ballard Corridor Design

Study, in referring specifically to the danger to bicyclists of the flangeway gaps at the crossing of the Skewed Tracks in the Crash Zone, the City admitted that: *“a rubberized crossing material that fills the flangeway gap, will mitigate this important safety issue.”*

2.91 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash Zone after the 2003 Ballard Corridor Design Study.

2.92 In 2003/2004, both Defendants were also defendants in the lawsuit of *Justice, et. al. v. City of Seattle and Ballard Terminal Railroad* (King County Cause No. 3-2-27338-4SEA), a case involving multiple bicyclists injured in crashes on the Skewed Tracks in the Crash Zone. In the course of that litigation, the Defendants were provided information and documents detailing the safety benefits of installing flangeway gap fillers at the Skewed Tracks.

2.93 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash Zone after the Defendants were provided the information about the safety benefits of installing flangeway gap fillers in the *Justice* case referenced in paragraph 2.92 above.

2.94 Long before the crashes that are the subject of this lawsuit, the City possessed a report entitled Bicycle Interactions and Streetcars: Lessons Learned and Recommendations.

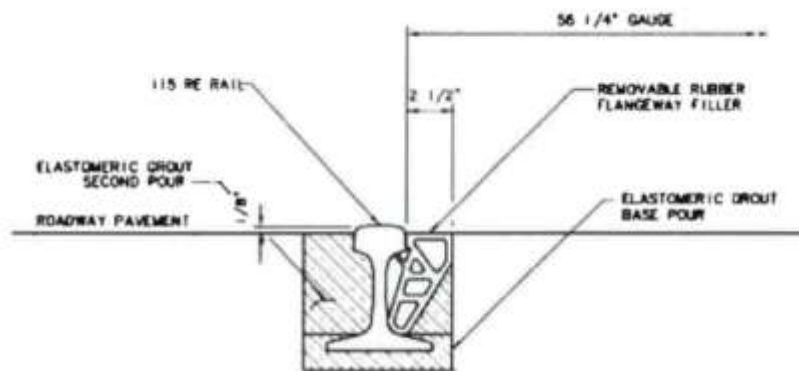
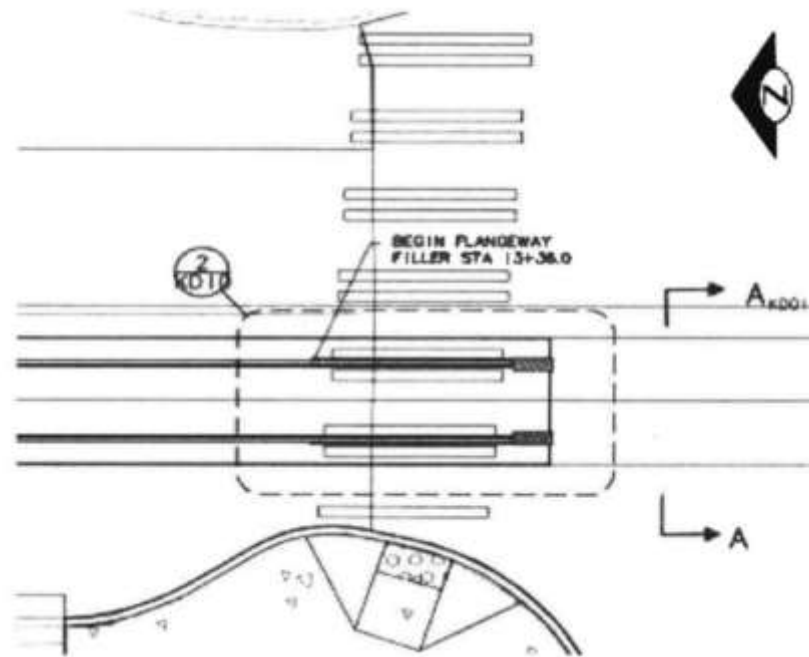
That report, dated October 17, 2008 and prepared by a company called Alta Planning & Design, discussed the feasibility of using flangeway gap fillers in different applications. At page 8, the report confirms that “Flange filler material used for heavy rail can reduce [bicycle] crash danger.” The report’s “Summary of Literature Reviewed” includes discussion of flangeway gap fillers being successfully utilized at rail crossings in several locations in North America and Europe.

1 2.95 In or about 2011, the City retained a company called URS to act as a consultant with
2 respect to the then-planned development of the First Hill Streetcar system. Among
3 other things, URS was tasked by the City to investigate the viability of using flangeway
4 gap fillers in a small section of streetcar rail located near the streetcar maintenance
5 facility and a housing facility for the elderly. In a report dated October 27, 2011
6 directed to SDOT, URS advised the City as follows:

7 [F]langeway fillers are only used for T-rail applications such as freight
8 railroads. One application identified in use today is the Cherry Avenue
9 Bridge in Chicago, Illinois. This railway bridge was modified for
10 pedestrian and bike use in 2009, while still accommodating infrequent
11 passage by freight trains. Because the freight trains use T-rails rather
12 than the girder rails that are used for in-street rail applications, the
existing T-rail was retrofitted with flangeway filler to make the bridge
more bike and pedestrian friendly.

13 2.96 The rails making up the Skewed Tracks in the Crash Zone are of the T-rail type.

14 2.97 On information and belief, below are images showing planned use of flangeway gap
15 fillers in the First Hill Streetcar system. These images are true and accurate excerpts
16 from the City's plans for the "First Hill Streetcar Project" Sheet No. 126 of 424 (2011):
17
18
19
20
21
22
23
24
25



2.98 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash Zone after the City received the 2011 URS Report confirming the feasibility of utilizing flangeway gap filler in applications like the Skewed Tracks in the Crash Zone and after the City developed plans for use of flangeway gap fillers in the First Hill Streetcar project.

1 2.99 In or about 2013, the City took steps to purchase and install flangeway gap filler
2 material for the small portion of track near the First Hill Streetcar maintenance facility
3 that was made up of T-rail.

4 2.100 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash
5 Zone after the City took steps in 2013 to purchase and install flangeway gap filler
6 material near the First Hill Streetcar maintenance facility.

7 2.101 On September 26, 2014 (after installation of the Bike Lane), Brock Howell of the
8 Cascade Bicycle Club, sent an email to SDOT's Mr. Chang, which included the following:
9

10 Maybe you've already heard the news about this recent crash on the
11 Missing Link tracks. If not, the email below tells the story of a couple's
recent crash while riding tandem.

12 The rainy season is bound to bring a greater rate of crashes there (by
13 percentage of bicyclists riding through). Painting the track area yellow (or
14 rave green) and installing [flange gap fillers] might be good
improvements.

15 I know you're skeptical that the [flange gap fillers] will hold up. But with
16 no car traffic and very little rail traffic, I'm sure [they] can last at least 3
17 years, by when the proposed city capital improvement plan says the BGT
will finally be completed. In the meantime, we'll at least prevented a few
serious crashes, like the crash in the below email.

18 2.102 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash
19 Zone after Mr. Howell sent the email to Mr. Chang referenced in paragraph 2.101
20 above.
21

22 2.103 On October 6, 2014, an individual named David Rowe sent an email to SDOT's Mr.
23 Chang, following up on a meeting they had regarding safety in the Missing Link.
24 Regarding the Skewed Tracks in the Crash Zone beneath the Ballard Bridge, Mr. Rowe
25 wrote:

1 A Filler Strip product...was repeatedly proposed to SDOT for this location
 2 for some years now. It would eliminate the many injuries that occur here,
 one of the highest locations of bicycle falls in Seattle. It should be
 installed. Only a short length of a few dozen feet would be needed.

3 . . .
 4 You indicated that Sound Transit was opposed to the filler strip product
 because of durability issues. I pointed out that is irrelevant, under Ballard
 5 Bridge, rail traffic averages just one engine about four times a week at
 about 3 MPH, and no vehicles would cross the rails, so durability should
 6 not be a problem. I request that SDOT install a permanent or pilot filler
 strip at this location as a matter of urgency. There seem to be several
 7 available products. As an example, the VeloStrail product. The Strail
 product line is in use at over 43,000 crossings around the world. Another
 8 option is the Getzner product. It also appears that SDOT has plans in place
 for use of a filler strip on First Hill.

9
 10 You also pointed out the Right of Way owners have historically been
 opposed to making safety improvements for bike riders. I asked if you
 11 would be prepared to approach the ROW owners to install or allow a filler
 strip under the Ballard Bridge. You committed to make a request to them
 12 to have this filler strip installed at the bike trail crossing. After our
 meeting, I was informed that in fact the City of Seattle owns this right of
 13 way.

14
 15 I look forward to your response and request that because these are all
 issues relating to reducing physical injury of unprotected cyclists, that you
 16 treat this with urgency and plan to implement your solutions within 30
 days after your planning period of two weeks.

17 Mr. Chang's replied to the above on October 22, 2014 as follows: *"Encourage you to*
 18 *contact [BTR] with your flange idea for the rail."* The same day, Mr. Rowe requested
 19 clarification: *"With regard to the rail, I assume you seek an approval from [BTR] for*
 20 *SDOT to install a flange. Please confirm and indicate in what form that approval should*
 21 *come."*

22
 23 2.104 All of the Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the
 24 Crash Zone after the correspondence between Mr. Rowe and Mr. Chang regarding
 25 flange gap fillers referenced in paragraph 2.103 above.

1 2.105 On October 29, 2014, an individual named Joe Kadushin sent an email to BTR's Byron
 2 Cole, with SDOT's Mr. Chang copied. On information and belief, this email was sent at
 3 the suggestion of David Rowe after his email exchange with Mr. Chang a few days
 4 earlier. A true and accurate excerpt from Mr. Kadushin's email follows:

5 I am writing to encourage you to facilitate Dongho Chang's suggestion
 6 from Seattle DOT to improve the Ballard Rail/Bike Trail intersection.

7 On 9/15/14, Merri Ann Osborne and I were riding a tandem bicycle
 8 heading south on the Burke Gilman trail. When we arrived upon the
 9 railroad tracks under the Ballard Bridge our tires got caught in the tracks,
 10 causing us to fall. An aid car was summoned and we were transported to
 11 Virginia Mason hospital. Aside from cuts and bruises, Merri Ann sustained
 a wrist fracture. As for me, cuts, bruises, stitches, cracked ribs and a
 collapsed lung resulting in a 3 day hospital stay.

12 I have become aware that this particular location...has had numerous falls
 13 due to the railroad tracks. In fact, Merri Ann's doctor told her he has
 14 treated 14 people this year for falls in that exact location! Moreover, my
 doctor was well of the that location too.

15 After my accident, I learned that a fellow cyclist requested that the City
 16 install a train friendly flexible filler strip that is common both in Europe
 and the USA. This would significantly reduce the number of falls from tires
 getting caught in the railroad tracks.

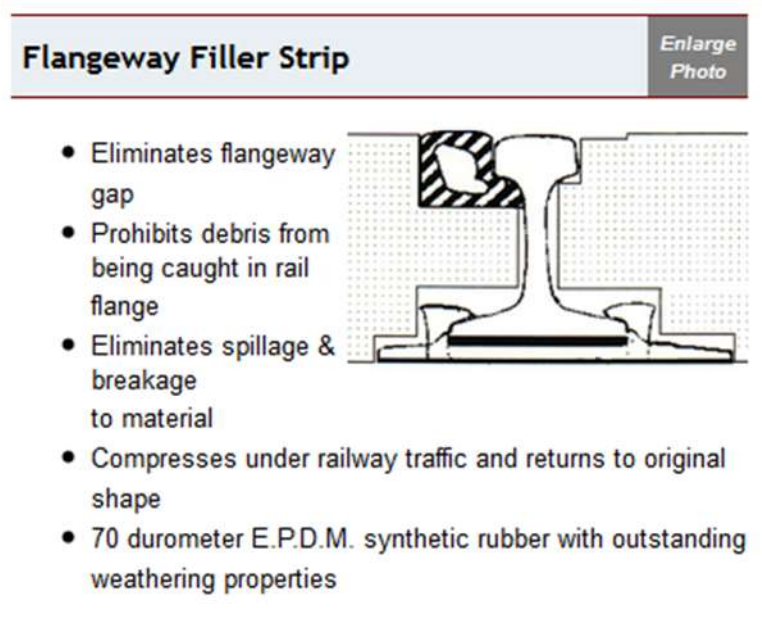
17 It has also come to my attention that Dongho Chang is seeking your
 18 approval before the City can begin to implement the filler strips.

19 In closing, I am pleading with you to approve the installation of a flexible
 20 filler strip in the areas of the Rail/Bike Trail intersection under the Ballard
 Bridge.

21 2.106 On information and belief, on November 21, 2014, David Rowe spoke to BTR's Byron
 22 Cole over the phone about bicycle crashes on the Skewed Tracks. Mr. Cole stated his
 23 strong belief that the only solution to the problem was rider behavior and expressed
 24 skepticism about the use of flangeway gap fillers.
 25

2.107 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash Zone after Mr. Kadushin sent email referenced in paragraph 2.105 above to Mr. Cole and after Mr. Rowe's discussion with Mr. Cole referenced in paragraph 2.106.

2.108 On August 18, 2016, Heather McAuliffe, Coordinator of the City's Ballard Avenue Landmark District Board, received an email from Rob Hyman at Interplay Inc. that described a "flangeway filler" product and included the following illustration:



The same day, Ms. McAuliffe forwarded Mr. Hyman's email to SDOT's Dongho Chang and asked: "I wonder if you have heard about this design feature being used in Europe to help making crossing tracks safer?"

2.109 All Plaintiffs crashed while attempting to cross the Skewed Tracks in the Crash Zone after the August 18, 2016 correspondence from Ms. McAuliffe to Mr. Chang referenced in paragraph 2.108.

2.110 On or about September 2, 2016, an individual named Mike Sallaberry of the San Francisco Municipal Transportation Agency wrote an email to the National Association

1 of City Transportation Officials, of which SDOT's Dongho Chang was a member and a
 2 recipient of the email. The email asked if members had had "any discussion or research
 3 about the possibility of a non-skid coating for the top portion of rails/tracks?" The
 4 email attached a document that discussed the issue and included the following:

5 Three typical issues with tracks and traversing them safely
 6 with wheeled devices such as bicycles, wheelchairs, strollers,
 7 etc. are:

- 8 1) Wheels falling into the flangeway
- 9 2) Poor pavement quality around the rails
- 10 3) Slipping on the top of the metal track

11 Mr. Sallaberry's email also asked the group whether there had been any developments
 12 in flangeway filler products that could work for a streetcar/light rail system and included
 13 the following: *"I've heard of products that could work with heavy rail that travels 5mph
 14 or less on straight sections of tracks, but never yet for applications beyond that."*

15 2.111 All Plaintiffs crashed while attempting to cross the Skewed Tracks in the Crash Zone
 16 after Mr. Chang received Mr. Sallaberry's September 2, 2016 email.

17 2.112 On May 13, 2016, Desiree McCloud crashed while riding her bicycle on East Yesler Way
 18 near 13th Avenue when her front wheel became lodged in a flangeway gap of the First
 19 Hill Streetcar tracks. Ms. McCloud died 11 days later due to the injuries she sustained
 20 in that crash. Ms. McCloud's estate sued the City of Seattle in King County Cause No.
 21 17-2-32732-8. As part of that litigation, the City took the position that flangeway gap
 22 fillers were not utilized in the area where Ms. McCloud crashed because such gap fillers
 23 were not feasible for use in urban streetcar applications where girder rail (as opposed
 24 to T-rail) was used.
 25

1 2.113 In responding to discovery propounded by the plaintiffs in the *McCloud* case, the City
2 answered (in part) in March 2018 as follows to an interrogatory on known danger to
3 bicyclist of rail tracks in the city: "The City is aware of a couple of locations where
4 bicycle riders have complained about PERCEIVED hazards, the rail line under the
5 Ballard Bridge being one of them. The City has attempted to improve signage and bike
6 routing...at those locations." (Allcaps in original).

7 2.114 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash
8 Zone after the City provided the interrogatory response in the *McCloud* case
9 referenced in paragraph 2.113 above.
10

11 2.115 At a July 19, 2018 CR 30(b)(6) deposition in the *McCloud* case, the City's designated
12 speaking agent, SDOT employee Jessica Murphy (who had been the Project Manager
13 for design development and construction of the First Hill Streetcar), admitted under
14 oath that at-grade railroad tracks present a hazard to bicyclists, especially when the
15 crossing angle is acute. In an attempt to distinguish the use of flangeway gap fillers in
16 streetcar applications from their use in traditional railroad tracks, the City further
17 admitted, through Ms. Murphy's testimony, as follows: ***"There are flange***
18 ***filler products that can be used in heavy rail lines with occasional low-speed rail***
19 ***traffic."*** Ms. Murphy and other City witnesses made additional comments under oath
20 in the *McCloud* case that establish that the City knew, by at least 2011, of the feasibility
21 of using flangeway gap fillers in applications like the Skewed Tracks in the Crash Zone.
22

23 2.116 The photograph below is a true and accurate copy of Exhibit No. 176 to the 30(b)(6)
24 deposition of Jessica Murphy in the *McCloud* case and is "a photograph taken at the
25

1 8th Avenue and Dearborn showing a rubber flange insert” which is used on a portion
2 of T-rail track in the First Hill Streetcar system.



13 2.117 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash
14 Zone after SDOT was aware of the feasibility of utilizing flangeway gap fillers in areas
15 like the Skewed Tracks in the Crash Zone and after the City admitted the feasibility
16 through Ms. Murphy’s deposition testimony in the *McCloud* case.

17
18 2.118 Starting by no later than the summer of 2018, the City undertook an extensive study
19 of the dangers to bicyclists of streetcar rails, including, but not limited to,
20 considerations for using flangeway gap fillers in streetcar tracks. Professionals from
21 SDOT, Cascade Bicycle Club and outside consulting firms were offered the opportunity
22 to provide input in the study on how to make streetcar crossings safe for bicyclists.
23 Other than planning for the to-be-built completion of the Burke-Gilman Trail/BMCP, at
24 no time were similar studies or considerations undertaken by the City for the Skewed
25 Tracks in the Crash Zone.

1 2.119 All Plaintiffs herein crashed while attempting to cross the Skewed Tracks in the Crash
2 Zone after the City conducted the review of track safety (including the use of flangeway
3 gap fillers) in other areas of the City, as described in paragraph 2.118.

4 2.120 On August 6, 2018, Mike Sallaberry of the San Francisco Municipal Transportation
5 Agency wrote an email to the National Association of City Transportation Officials, of
6 which SDOT's Dongho Chang was a member and a recipient of the email. Mr.
7 Sallaberry's email discussed Washington D.C.'s testing of flangeway gap fillers. The
8 email included the following link to an August 1, 2018 WAMU (American University
9 radio station) article: [https://wamu.org/story/18/08/01/ddot-researching-rubber-](https://wamu.org/story/18/08/01/ddot-researching-rubber-flaps-streetcar-tracks-fatal-bike-crash/)
10 [flaps-streetcar-tracks-fatal-bike-crash/](https://wamu.org/story/18/08/01/ddot-researching-rubber-flaps-streetcar-tracks-fatal-bike-crash/). The WAMU article discussed a bicyclist fatality
11 on a set of tracks in Washington D.C. and that city's commitment "to testing and
12 evaluating different products to make the tracks more cyclist friendly." The story went
13 on to explain that: "In other cities, rubber flanges fill or cover the gap in train tracks.
14 Cyclists aren't heavy enough to push the rubber down, but streetcars are." The link
15 also included video taken by faculty at the University of Tennessee showing dozens of
16 bicyclists crashing on skewed railroad tracks over a two-month period in 2014.

17 2.121 All Plaintiffs (other than Mr. Robinson) crashed while attempting to cross the Skewed
18 Tracks in the Crash Zone after Mr. Chang received Mr. Sallaberry's August 6, 2018 email
19 with the referenced link.
20

21 2.122 At no time relevant hereto did the City and BTR communicate with one another about
22 utilizing flangeway gap fillers at the Skewed Crossing in the Crash Zone.
23
24
25

2.123 If flangeway gap fillers had been installed on the Skewed Tracks in the Crash Zone at the time Plaintiffs (and countless other bicyclists) crashed, the crossing of the Skewed Tracks would have been significantly less hazardous for bicyclists, including the Plaintiffs, and it is more probable than not that the presence of flangeway gap fillers would have prevented the crashes that are the subject of this action.

Ownership and Control of the Skewed Tracks Crossing

2.124 The tracks at issue, including the Skewed Tracks in the Crash Zone, are owned by the City. The use of the tracks by BTR is governed, in part, by a 1997 Operating Agreement (hereinafter “the Operating Agreement”). Pursuant to the Operating Agreement, BTR has the right to use the tracks, including for the business purpose of transporting goods on rail cars.

2.125 The relationship between the City and BTR regarding the tracks is also governed by City of Seattle Ordinance No. 118734 (hereinafter “the Franchise Ordinance”), which was entered into law in 1997. The Franchise Ordinance includes the following provisions:

A) The Operating Agreement shall provide that BTR will agree “to be fully responsible for all costs of maintenance, operation, and rehabilitation of the railroad, including but not limited to maintenance of crossings...maintenance of way, and all liability for accidents occurring on the property used by the railroad or arising out of railroad operations.”

B) The City “shall retain the same control of the streets, avenues, multi-use trails, and other rights-of-way in and across which said railway tracks shall be laid down as over other streets, avenues, multi-use trails and other rights-of-way within the City... and

1 shall have such further control and police power over such franchise rights-of way and
 2 tracks, and the use thereof, as the City Charter and the Federal and State Constitutions
 3 and laws may now or hereafter permit. [BTR] shall comply with SMC Chapter 11.66,
 4 Railroad Operation and shall erect and maintain all such safety devices, warning signs
 5 and signals, lights and appliances as may be necessary to protect and facilitate public
 6 travel across each and every track herein authorized.”

7
 8 C) The City reserves to itself and BTR “the right to construct all public improvements
 9 (including trails)...and the City reserves to itself full and complete right of access to any
 10 space occupied by such tracks and to all of said franchise right-of-way...or within said
 11 franchise right-of-way, for all purposes of construction, maintenance, repair, operation
 12 and inspection of any...public improvements which rights shall, however, be exercised
 13 in such manner as not to interfere with the safe operation of locomotives, cars and
 14 trains on said tracks.”

15
 16 D) BTR “shall be solely responsible for the maintenance and safety of the right-of-
 17 way...including all tracks and all grade crossings, and shall cooperate and coordinate
 18 with the City of Seattle Director of Transportation to assure adequate rehabilitation,
 19 repair and maintenance of all tracks and grade crossings herein authorized, all at
 20 [BTR's] sole cost and expense.”

21
 22 E) BTR “shall construct and maintain the tracks...so that the top of the rail thereof shall
 23 at all times conform to the street grade...and the City hereby reserves the right to
 24 change the grade of any streets, avenues or public places at any time, and when the
 25 City shall change such grade [BTR], by acceptance of this ordinance, hereby covenants

1 and agrees with the City, to waive any and all damages that it may sustain on account
 2 of having to readjust its tracks by reason of such change of grade. Such waiver is made
 3 upon condition that any change of grade hereafter made by the City to the streets
 4 and avenues upon which the franchise is hereby granted, shall not be unreasonable,
 5 or such as to interfere with the proper and practical operation of said track when the
 6 same shall have been adjusted to said new grade.”

7 F) BTR “shall defend,...and shall fully indemnify and hold the City and its officers,
 8 employees, and agents harmless from any and all losses, claims, actions, judgments,
 9 property damages, death, personal injuries, or damages suffered by any person or
 10 entity arising out of or resulting from (1) any occurrence of property damage, death
 11 or injury in or on the franchise right-of-way...; (2) [BTR’s] operations on or off the
 12 franchise right-of-way...It is intended that the foregoing indemnity shall be broad and
 13 comprehensive.”

14 G) The liability of BTR described above “shall not be diminished by the fact...that any such
 15 death, injury, damage, loss, cost, or expense may have been, or may be alleged to
 16 have been, contributed to by the negligence of the City or its officers, employees, or
 17 agents, unless such negligence is solely and entirely the fault of the City.”

18 2.126 Per the Franchise Agreement, the City has had the right to make adjustments to the
 19 tracks. Such action was feasible. In fact, as part of the BMCP, it is contemplated that
 20 tracks could be moved/adjusted in such a manner as to make the crossing of the tracks
 21 by bicycle safer. The City’s failure to earlier exercise this right in the Crash Zone (before
 22
 23
 24
 25

1 Plaintiffs' crashes) constitutes a breach of the City's duty to make streets reasonably
 2 safe for ordinary travel by bicycle.

3 2.127 In a June 18, 2015 document prepared by the City entitled: "Burke-Gilman Trail Missing
 4 Link Environmental Impact Statement Public House Report," the City provided the
 5 following information to the public regarding the Skewed Tracks in the Crash Zone:

6 *"Q: Why can't we pave over the railroad tracks to make the area safer?
 7 Who maintains the railroad tracks? A: The tracks are owned and operated
 8 by the Ballard Terminal Railroad Company, which has maintained its
 9 license and operational permit with the City of Seattle since 1997. **The City**
 10 **has granted a franchise to the railroad and can move the tracks within**
 11 **the right-of-way if it desires, but the City cannot obstruct the railroads'**
 12 **operation."***

11 (Emphasis Added)

12 2.128 Each of the Plaintiffs crashed while attempting to cross the Skewed Tracks in the Crash
 13 Zone after the publication of the House Report described in paragraph 2.127 above.

14 **Liability of the Defendants and Causation**

15 2.129 The reasons the crossing of the Skewed Tracks in the Crash Zone was not reasonably
 16 safe for ordinary travel by bicycle at all times relevant hereto include, but are not
 17 limited to, one and/or a combination of the following factors: (1) the perilous angle of
 18 the Skewed Tracks as oriented to the street; (2) the width and depth of the flangeway
 19 gaps; (3) the condition and height of the road surface adjacent to (inside and/or
 20 outside) the track rails; (4) the failure of the Defendants to install flangeway gap fillers;
 21 (5) the slick surface of the track rails in comparison to the roadway between and on
 22 either side of the rails; (6) the absence of physical barriers or channeling (beyond paint
 23 and a very few breakable plastic flex posts) to meaningfully reduce the risk of cyclists
 24
 25

1 crossing the Skewed Tracks at a dangerous angle; (7) the failure to adequately maintain
2 the road paint, plastic flex posts and signs that had been installed in the years prior to
3 Plaintiffs' crashes; and (8) the lack of adequate or appropriate warnings to bicyclists of
4 the Skewed Tracks and guidance as to how to safely cross the Skewed Tracks.

5 2.130 Each of the Plaintiffs herein crashed as the result of one or a combination of the factors
6 listed in paragraph 2.129 above.

7 2.131 Given numerous notices, claims and lawsuits over decades from people who have been
8 injured attempting to cross the Skewed Tracks in the Crash Zone, each of the
9 Defendants knew or should have known of the dangers of this area long before the
10 Plaintiffs suffered their injuries. Each of the defendants also knew or should have
11 known generally of the dangers railroad tracks pose to people riding bicycles.
12

13 2.132 The City owns, designs, operates, and maintains streets within the City of Seattle. The
14 City has a duty to design, operate and maintain its streets in conditions that are
15 reasonably safe for ordinary travel, including travel by bicycle.
16

17 2.133 The City breached its duty to make streets reasonably safe for ordinary travel by bicycle
18 by installing a bicycle lane over the Skewed Tracks in the Crash Zone and directing and
19 encouraging bicyclists with signs, road markings and by other means to ride on this
20 route.
21

22 2.134 At the time each of the Plaintiffs crashed, the crossing of the Skewed Tracks in the
23 Crash Zone was not reasonably safe as designed and failed to comply with applicable
24 standards, including, but not limited to, the Manual for Uniform Traffic Control Devices
25 ("the MUTCD"). The design of the crossing constituted a breach of the City's duty to

1 make the streets in the Crash Zone reasonably safe for ordinary travel, including the
2 duty to provide safe passage for bicyclists over the Skewed Tracks. The design of the
3 crossing also constituted a breach of each of the Defendants' obligations pursuant to
4 the Operating Agreement and the Franchise Ordinance.

5 2.135 At the time each of the Plaintiffs crashed, the crossing of the Skewed Tracks in the
6 Crash Zone was not reasonably safe as operated by the Defendants and failed to
7 comply with applicable standards, including, but not limited to, the MUTCD. The
8 operation of the crossing constituted a breach of the City's duty to make the streets in
9 the Crash Zone reasonably safe for ordinary travel, including the duty to provide safe
10 passage for bicyclists over the perilous Skewed Tracks. The operation of the crossing
11 also constituted a breach of each of the Defendants' obligations pursuant to the
12 Operating Agreement and the Franchise Ordinance.
13

14 2.136 At the time each of the Plaintiffs crashed, the crossing of the Skewed Tracks in the
15 Crash Zone was in a state of excessive wear and disrepair because the Defendants
16 failed to take reasonable steps to maintain it. The excessive wear and disrepair
17 constituted a breach of applicable standards, including, but not limited to, the MUTCD.
18 The excessive wear and disrepair of the crossing constituted a breach of the City's duty
19 to make the streets in the Crash Zone reasonably safe for ordinary travel, including the
20 duty to provide safe passage for bicyclists over the perilous Skewed Tracks. The
21 excessive wear and disrepair of the crossing also constituted a breach of each of the
22 Defendants' obligations pursuant to the Operating Agreement and the Franchise
23 Ordinance.
24
25

2.137 At the time each of the Plaintiffs crashed, the signs and road markings in and approaching the Crash Zone were absent or were inappropriate and/or inadequate to provide sufficient warning to bicyclists of the existence and danger of the Skewed Tracks and/or to provide sufficient guidance as to how to safely cross the tracks. The inadequate signs and road markings constituted a breach by the Defendants of applicable standards, including, but not limited to, the MUTCD. The inadequate signs and road markings constituted a breach of the City's duty to make the streets in the Crash Zone reasonably safe for ordinary travel. The inadequate signs and road markings also constituted a breach of each of the Defendants' obligations pursuant to the Operating Agreement and the Franchise Ordinance.

2.138 At all times relevant hereto, the crossing of the Skewed Tracks in the Crash Zone by was inherently dangerous and/or misleading for bicyclists.

2.139 Each of the Plaintiffs crashed while lawfully riding a bicycle in the Crash Zone and attempting to cross the Skewed Tracks. Each of the Plaintiffs crashed when their bicycle tires interacted with a track rail and/or flangeway gap in a manner which caused the bicycle and rider to lose dynamic stability. Upon crashing on the tracks and/or pavement, each Plaintiff suffered serious bodily injury and other damages. The date of each Plaintiff's crash is as follows:

- Jeffrey Robinson July 23, 2018
- David Surber June 18, 2019
- Laura Mortensen May 12, 2020
- Chaeji Kim May 27, 2020

- Lindsay Murphy August 2, 2020
- Jacklyn Kelley August 22, 2020
- Barbara Oldenburger August 29, 2020
- Kathleen Nolan September 1, 2020

III. CAUSES OF ACTION AGAINST CITY OF SEATTLE, INCLUDING NEGLIGENCE

3.1 Plaintiffs reassert the allegations of paragraphs 1.1 through 2.139 as though fully set forth herein.

3.2 As a municipality, the City has a duty of care to all travelers to maintain its streets, including bicycle lanes installed on its streets, in a condition that is reasonably safe for ordinary travel, including travel by bicycle. The City breached this duty.

3.3 The City's duty to maintain its streets and bicycle lanes in a reasonably safe condition includes the duty to eliminate or correct dangerous or unsafe conditions. The City breached this duty.

3.4 The City's duties described herein are non-delegable. The City is not relieved of these duties by delegating or seeking to delegate them to another person or entity, including, but not limited to, BTR through the Franchise Ordinance or the Operating Agreement.

3.5 The City is jointly and severally liable with any and all other persons or entities who may also be at fault for causing Plaintiffs' damages, including BTR.

3.6 The abolition of sovereign immunity by the State of Washington applies to the Plaintiffs' claims against the City and, pursuant to Washington Supreme Court precedent, including *Howe v. Douglas County*, 146 Wn. 2d 183 (2002) and *Rivett v. City*

1 *of Tacoma*, 123 Wn.2d 573 (1994), the City may not shift financial responsibility for its
2 own fault to BTR or any other person or entity.

3 3.7 At all times relevant hereto, for bicyclists, the crossing of the Skewed Tracks in the
4 Crash Zone constituted an extraordinary condition and/or an unusual hazard to
5 bicyclists requiring greater care by the City to correct than would be sufficient in
6 ordinary settings. The City failed to take the steps necessary to correct this
7 extraordinary condition/unusual hazard.

8 3.8 The City had a duty under RCW 81.53.090 to maintain and keep the subject railroad
9 crossing in good repair. The City breached this duty.

10 3.9 Under Seattle Municipal Code 11.66.200, as the owner of the Skewed Tracks, which
11 are open to the public for crossing by bicycle, the City had a duty to provide suitable
12 means of protection from exposed and dangerous places. The City breached this duty.

13 3.10 At all times relevant hereto, the condition of the crossing of the Skewed Tracks in the
14 Crash Zone constituted a nuisance under RCW 7.48.010 et. seq. and RCW 9.66.010 et.
15 seq. for which the City is responsible and Plaintiffs are entitled to monetary damages
16 and/or equitable relief pursuant thereto.

17 3.11 Without limitation, the City breached one or more of its duties: (1) by installing a Bike
18 Lane through the Crash Zone over the perilous Skewed Tracks; (2) by encouraging
19 bicyclists to ride through the Crash Zone via signage and other means; (3) by failing to
20 properly design the Bike Lane; (4) by failing to install flangeway gap fillers on the street
21 as it crosses the Skewed Tracks; (5) by failing to take reasonable steps to modify the
22 Skewed Tracks in relation to the street; (6) by failing to install adequate and
23 and/or equitable relief pursuant thereto.

appropriate signs, road markings and channelization in and approaching the Skewed Tracks; and/or (7) by failing to maintain the infrastructure on the street and in the Bike Lane (including, but not limited, failure to maintain: the pavement adjacent to and between the track rails; road markings; warning signs; and plastic flex posts posts) in a reasonably safe condition.

3.12 Each of the acts or omissions of the City described herein were ministerial and/or operational in nature and none involved high-level policymaking and/or decision-making.

3.13 Pursuant to the Franchise Ordinance, the City retained the same control of the streets across which the Skewed Tracks lay as it had with other streets within the City of Seattle. The City failed to utilize that control, and therefore breached its duty to make the crossing of the Skewed Tracks in the Crash Zone reasonably safe for ordinary travel by bicycle.

3.14 As a direct and proximate result of one or more of the City's breaches of duty described herein, each of the Plaintiffs suffered serious injuries and other damages in amounts to be proven at the time of trial.

3.15 No person or entity other than Defendants caused or contributed to the Plaintiffs' injuries and damages.

IV. CAUSES OF ACTION AGAINST BALLARD TERMINAL RAILROAD, INCLUDING NEGLIGENCE

4.1 Plaintiffs reassert the allegations of paragraphs 1.1 through 3.15 as though fully set forth herein.

1 4.2 BTR had a duty under RCW 81.53.090 to maintain and keep the subject railroad
2 crossing in good repair. BTR breached that duty.

3 4.3 Under Seattle Municipal Code 11.66.200, as the operator of the Skewed Tracks, which
4 are open to the public for crossing by bicycle, BTR had a duty to provide suitable means
5 of protection from exposed and dangerous places. BTR breached that duty.

6 4.4 At all times relevant hereto, the condition of the crossing of the Skewed Tracks in the
7 Crash Zone constituted a nuisance under RCW 7.48.010 et. seq. and RCW 9.66.010 et.
8 seq. for which the BTR is responsible and Plaintiffs are entitled to monetary damages
9 and/or equitable relief pursuant thereto.
10

11 4.5 BTR has a duty of care to users of public streets, including users of bicycle lanes on
12 public streets, to maintain the crossings of railroad tracks it operates in a reasonably
13 safe condition. BTR breached that duty.

14 4.6 At all times relevant hereto, for bicyclists, the crossing of the Skewed Tracks in the
15 Crash Zone constituted an extraordinary condition and/or an unusual hazard requiring
16 greater care by BTR to correct than would be sufficient in ordinary settings. BTR failed
17 to take the steps necessary to correct this extraordinary condition/unusual hazard.
18

19 4.7 Pursuant to the Franchise Ordinance, BTR has a duty to maintain crossings at areas
20 where BTR railroad tracks intersect with public streets, including streets with bicycle
21 lanes and including within the streets in the Crash Zone. BTR breached this duty.

22 4.8 Pursuant to the Franchise Ordinance, BTR has a duty to erect and maintain "safety
23 devices, warning signs and signals, lights and appliances as may be necessary to protect
24
25

1 and facilitate public travel across” BTR railroad tracks, including the Skewed Tracks in
2 the Crash Zone. BTR breached this duty.

3 4.9 Pursuant to the Franchise Ordinance, BTR is responsible for “the maintenance and
4 safety of the right-of-way...including all tracks and all grade crossings....” BTR was also
5 required to “cooperate and coordinate with the City of Seattle Director of
6 Transportation to assure adequate rehabilitation, repair and maintenance of all tracks
7 and grade crossings.” This includes the Skewed Tracks in the Crash Zone.

8
9 4.10 Without limitation, BTR breached one or more of its duties: (1) by failing to install
10 flangeway gap fillers on the street as it crosses the Skewed Tracks; (2) by failing to take
11 reasonable steps to modify the Skewed Tracks in relation to the street; (3) by failing to
12 install adequate and appropriate signs, road markings and channelization in and
13 approaching the Skewed Tracks; and/or (4) by failing to maintain the infrastructure on
14 the street and in the Bike Lane (including, but not limited, failure to maintain: the
15 pavement adjacent to and between the track rails; road markings; warning signs; and
16 plastic flex posts posts) in a reasonably safe condition.

17
18 4.11 As a direct and proximate result of one or more of BTR’s breaches of the duties
19 described herein, each of the Plaintiffs suffered serious injuries and other damages in
20 amounts to be proven at the time of trial.

21
22 4.12 No person or entity other than Defendants caused or contributed to the Plaintiffs
23 injuries and damages.
24
25

V. LIMITED PHYSICIAN/PATIENT PRIVILEGE WAIVER

5.1 Plaintiffs hereby waive the physician/patient privilege only to the extent required by RCW 5.60.060, as limited by their constitutional rights of privacy, contractual rights of privacy, and the ethical obligations of physicians and attorneys not to engage in *ex parte* contact between a treating physician and a patient's legal adversaries.

5.2 Any contact with any of Plaintiffs' health care providers must be made pursuant to the Rules of Civil Procedure or prior stipulation with Plaintiffs' counsel.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, and each of them, pray for judgment against Defendants, jointly and severally, as follows:

1. For each Plaintiff's past and future economic damages in such amounts as proven at the time of trial;

2. For each Plaintiff's past and future non-economic damages in such amounts as proven at the time of trial;

3. For interest calculated to the maximum amount allowable by law, including pre-judgment interest;

4. For each Plaintiff's costs and disbursements incurred herein;

5. For each Plaintiff's attorney's fees and costs; and

6. For such other and further relief, including injunctive relief to abate nuisance, as the Court deems just and equitable.

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2 Dated this 22nd day of March 2022

3 ANDERTON LAW OFFICE-WASHINGTON BIKE LAW

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